

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13355, of Allen I. Price, Jr., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a flat to an apartment house of three units in an R-3 District at the premises 1320 - 35th Street, N.W., (Square 1227, Lot 93).

HEARING DATE: October 22, 1980

DECISION DATE: October 22, 1980 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located on the west side of 35th Street between N and O Streets and is known as 1320 - 35th Street, N.W. It is in an R-3 District.
2. The subject lot is approximately 1,190 square feet in area. It is improved with a two story plus basement row dwelling currently in use as a three unit apartment house.
3. To the rear of the site is a twenty foot wide public alley. The premises is adjoined on the north by a similar two story plus basement row dwelling and on the south is a three story, twelve unit apartment building. There are a number of non-conforming uses in 35th Street between N and O Streets, including a sewing shop, grocery store, dry cleaning and shoe repair shop. The Georgetown University Hospital has a dormitory on the southwest corner of 35th and O Streets. Other uses in the subject Square 1227 include Holy Trinity Church, School and Convent and the Trinity Theater, which is located on the south side of O Street.
4. On August 26, 1980, a Certificate of Occupancy was issued for the use of the subject property as a flat.
5. By BZA Order No. 12057, dated March 4, 1976, the Board denied the same relief for the same family for the same property as the subject application.

6. The representative of the applicant testified that her parents bought the subject property in 1957. At the time of purchase, there were three apartments as there are at present. The representative further testified that she initiated the subject application because she had been advised by the Zoning Inspection Branch that the premises were being used without a valid Certificate of Occupancy.

7. The subject apartment now houses six students. None have cars. The applicant's representative testified that the use of the property as an apartment house had not changed the structural part of the building. The building has been maintained over all the years. There are a number of non-conforming uses in the immediate neighborhood. The applicant submitted a petition of twenty-four signatures in favor of the application.

8. The applicant, with his family, owns some twenty-three units in the subject neighborhood. The applicant's representative testified that the subject premises could readily be used as a one family unit or flat.

9. The applicant's representative stated that when the Board denied the previous application in 1976, she did nothing about removing the illegal use since she was concerned with the health problems of her family.

10. The Office of Planning and Development, by report dated October 16, 1980, recommended that the application be denied. The OPD reported that a Class II non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted. A flat is permitted in the R-4 District as a matter-of-right. Conversions to apartment buildings are first permitted in the R-4 District provided there is 900 square feet of lot area per apartment unit in buildings pre-dating May 12, 1958. Apartment buildings, as new construction, are first permitted in the R-5-A District. The application for a Certificate of Occupancy on file (Exhibit No. 8) indicates that the previous use of the premises was for apartments prior to 1960. Sub-section 7104.3 of the Zoning Regulations states:

"When an existing non-conforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a non-conforming use or less restrictive use."

Based upon the Certificate of Occupancy application of 1960 to change the then existing apartment building to a flat, for zoning purposes, the less restrictive apartment use ceased at that time. Thus, the premises have previously been converted to a more restrictive use and, therefore, could not now be changed to a three-unit apartment building without an additional variance from Sub-section 7104.3.

A critical issue is the denial of Application No. 12057 by the Board in 1976. That application also requested a change in non-conforming use from a flat to a three-unit apartment building for the same premises. Irrespective of whether the building had been used as an apartment building between 1960 and 1976, the OPD was of the opinion that such use should have been discontinued at that time in accordance with the Board's Order. The OPD did not distinguish any new characteristics of this property, the adjoining properties or the neighborhood which would differentiate the facts of this application from those of Application 12057. The OPD was not aware of any additional mitigating circumstances which would warrant the granting of a special exception to change a non-conforming use or the grant of a variance from the prohibition against allowing a change of non-conforming use to a less restrictive one. The Board concurs with the findings and opinion of the OPD.

11. The Citizens Association of Georgetown, by letter dated September 29, 1980, opposed the application on the grounds that the applicant ignored the Board's denial in BZA Order No. 12057 and continued to use the subject premises as an apartment house. There was also a letter of record from a property owner residing directly across the street from the subject property who complained of loud noises emanating from the subject property.

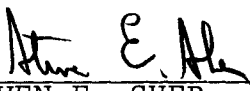
12. Advisory Neighborhood - 3A made no recommendation on the application. Single Member Districts SMD-02 and SMD-03, by letters of October 17, 1980, opposed the application on the grounds that approval of the application would constitute a notification of the existence of an illegal third apartment.

CONCLUSIONS OF LAW:

The Board concludes that based on Findings Nos. 5, 10, 11 and 12 the special exception cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and its grant would affect adversely the use of neighboring property. The Board expresses great concern about the behavior of the applicant in flaunting the prior Order of the Board. The Board further notes that the subject property can readily be used for the purposes for which there is an existing Certificate of Occupancy. Accordingly, for all these reasons, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Connie Fortune
Douglas J. Patton and William F. McIntosh to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 30 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION
OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER
HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF
PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."